IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 663 of 1990

with

CIVIL APPLICATION No. 3105 of 2005

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAO VANRAJSINHJI S - Applicant(s)

Versus

BABUBHAI MADHAVLAL CHAUDHARI & 4 - Opponent(s)

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Appearance :

MR CB DASTOOR for Petitioner No(s).: 1.

MS KJ BRAHMBHATT for Respondent No(s).: 1 - 1.
MS VARSHA BRAHMBHATT for Respondent No(s).: 1 - 1.
NOTICE SERVED for Respondent No(s).: 2, 3, 4,5.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 12/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 18th October, 1989 passed by the learned Joint District Judge, Mehsana in Regular Civil Appeal No.145/1984, the

respondent no.1 (plaintiff in Regular Civil Suit No.63/1977) has preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as, **"the Rent Act"**).

The petitioner-plaintiff is the owner of the suit land bearing Nagar Panchayat Census No.303E admeasuring 16598 sq.feet situated at Mansa, taluka Vijapur, District Mehsana. Under the licence agreement dated 4th March, 1968 (Exh.26 before the lower appellate Court) the suit land was leased to the respondent no.1-defendant no.1 for a monthly licence fee of Rs.150=00 for a period of 7 years. Under the said agreement Exh.26 the defendant no.1 had taken the suit land on licence for running the business of auto repairs. It was agreed that the defendant no.1 would not make any permanent construction without the permission of the plaintiff and that he shall use the shops, sheds, etc. constructed by him for personal use alone. The plaintiff instituted Regular Civil Suit No.63/1977 in the Court of Civil Judge (J.D.), Vijapur for recovery of possession of the suit land and the arrears of rent on the grounds that the defendant no.1

was in arrears of rent since 1st June, 1973 and that he was not ready and willing to pay the rent; the defendant no.1 had, without the permission of the plaintiff, made permanent construction on the suit land and that the defendant no.1 had unlawfully sublet parts of the suit land to the defendants nos.2 to 4. Pending the suit a Court Commissioner was appointed to make a panchnama. Such panchnama was drawn on 7th May, 1977 and has been produced at Exh.151. The suit was contested by the defendant no.1 vide written statement Exh.27. He denied the allegations that he was in arrears of rent; that he had sublet the suit land to the defendants nos.2 to 4 as alleged and that he had raised permanent construction without the permission of the plaintiff. The defendant no.1 also raised dispute as to the standard rent of the suit land. The defendants nos.3/1 and 3/2 contested the suit vide written statements Exhs.89, 90 and 100. The defendant no.3/1 admitted that he was inducted in one of the constructions raised on the suit land by the defendant no.1 and that he was paying rent of Rs.65=00 to the defendant no.1.

The learned Civil Judge, by judgment and order dated

5th May, 1984, passed decree in favour of the plaintiff on the grounds that the defendant no.1 had sublet parts of the suit land to the defendants nos.2 to 4 and that he had raised permanent construction without the permission of the plaintiff. The learned Civil Judge did not believe that the defendant no.1 was in arrears of rent since 1st June, 1973 as alleged. The defendant no.1 was held liable to pay rent since January, 1977 till the date of the decree. The learned Civil Judge held that Rs.150=00 exclusive of taxes was the standard rent of the suit land. Feeling aggrieved, the defendant no.1 preferred Regular Civil Appeal No.145/1984 in the Court of learned Civil Judge, Mehsana. The plaintiff also preferred cross-objections in so far as the decree for possession for non-payment of rent was refused. The learned Joint District Judge, by impugned judgment and order, allowed the Appeal and dismissed the cross-objections. Feeling aggrieved, the plaintiff has preferred the present Revision Application.

Mr.Dastoor has assailed the judgment of the lower appellate Court. He has read out the pleadings, the oral evidence on record and the documentary evidence to

buttress the contention that the defendants nos.2 to 4 were indeed present on the suit land; they were carrying on their own business in the names National Automobiles and Service, Anand Motor Garage, Sunrise Motor Garage and Sahjanand Motor Stores. He has submitted that the plaintiff did produce the record from the revenue record of the Nagar Panchayat and the Office of the Shops and Establishments to prove the presence of the aforesaid sub-tenants in the suit premises. Nevertheless, the lower appellate Court has erred in dismissing the suit on the ground that the plaintiff had failed to prove the monetary consideration. He has also submitted that the agreement Exh.26 specifically stipulated that the defendant no.1 shall not raise any construction on the suit land. The Panchnama Exh.151 has proved the presence of kachcha and pakka construction on the suit land. The defendant no.1 has thus raised permanent construction on the suit land in contravention of the terms of the tenancy. Mr.Dastoor has also submitted that undoubtedly the defendant no.1 was entitled to protection against eviction under Section 12(3)(b) of the Rent Act. Such protection could be availed of by the defendant no.1 provided he complied with the conditions mentioned in

Section 12(3)(b) of the Rent Act. Admittedly, the defendant no.1 had raised dispute as to the standard rent of the suit land. The standard rent was determined by the trial Court on the date of the decree. Thus though pending the suit the defendant no.1 was under no obligation to pay the rent regularly every month (for want of fixation of standard rent), he was under an obligation to pay the decretal amount and continue to pay the rent regularly every month pending the Appeal and this Revision Application. He has submitted that pending this Revision Application the defendant no.1 has not paid any rent. The plaintiff had, therefore, to take out Civil Application No.3105/2005. The said Civil Application is not contested by the respondents. Since the decision of the lower appellate Court the defendant no.1 has not paid the rent. The defendant no.1 being in arrears of rent he has forfeited protection under Section 12(3)(b) of the Rent Act and decree for eviction shall pass against the defendant no.1. He has relied upon the judgment in the matter of **John Panchal v/s. Chhagan L Machhar and another** [Civil Revision Application No.912/1989 decided by me on 19th April, 2005]. He has submitted that in the said judgment it has been categorically held that, **"...by**

their conduct in not depositing the rent regularly pending this Revision Application the defendants have forfeited their right to protection against eviction conferred by Section 12(3)(b) of the Rent Act."

The Revision Application is contested by Ms.Brahmbhatt. She has submitted that since the date of the decree passed by the learned Civil Judge the defendant no.1 had paid up the arrears of rent and, as recorded by the lower appellate Court, he continued to pay the rent regularly pending the Appeal. She has submitted that the lower appellate Court has rightly allowed the Appeal and refused decree for eviction. She has submitted that the words "till the suit is finally decided" occurring in Section 12(3)(b)(i) have been construed by this Court to mean "till the decision in appeal". It has been held that the appeal is continuation of the suit and the tenant is, therefore, under an obligation to pay the rent regularly pending the suit as well as pending the appeal. Ms.Brahmbhatt has demonstrated that pending the Appeal the defendant no.1 had paid the rent regularly. However, the said obligation does not continue pending the Revision Application. In

support thereof she has relied upon the judgment of this Court in the matter of **Bai Revaben wd/o Sitaram Gangaram v/s. Sindhi Meghnath Enshiram** [21 GLR 560].

The agreement Exh.26 does stipulate that licensee (the defendant no.1) would raise a temporary shed for his business. However, it further stipulates that at the time of handing over the possession of the suit land the licensee shall remove all constructions, sheds, foundations, etc. raised in the suit land. It further stipulates that the licensee shall not make any construction, shed, etc. in the suit land without the permission of the licensor (the plaintiff). Thus, it is apparent that under the said agreement the defendant no.1 was not intended to carry on his business on the open land but was permitted to raise construction, shed, etc. to carry on his business. Hence, the construction raised by the defendant no.1 cannot be said to be in contravention of the terms of the agreement so as to invite a decree for eviction. As to the subletting, the lower appellate Court has believed the presence of the defendants nos.2 to 4 in the construction raised by the defendant no.1 on the suit land. The lower appellate

Court has held that what was sublet to the defendants nos.2 to 4 was the super-structure raised by the defendant no.1. There was no evidence to show that the defendants nos.2 to 4 were leased part of the suit land. Admittedly, the super-structure belonged to the defendant no.1. In absence of any proof that the defendants nos.2 to 4 were leased any part of the land no decree for eviction can be passed on the ground of unlawful subletting. I entirely agree with the reasoning of the lower appellate Court. As to the arrears of rent, the lower appellate Court has rightly held that the defendant no.1 was protected by Section 12(3)(b) of the Rent Act. As the standard rent was determined on the date of the decree the defendant no.1 was under no obligation to pay the rent pending the suit to earn protection under Section 12(3)(b) of the Rent Act. Since the date of the decree he had paid the arrears of rent and continued to pay the rent pending the Appeal. The defendant no.1 thus having earned the protection under Section 12(3)(b) of the Rent Act, the lower appellate Court has rightly rejected the suit.

In the matter of Bai Revaben (supra), a contention

was raised before this Court that the tenant who had not deposited the rent regularly during the pendency of the Revision Application filed under Section 29(2) of the Rent Act could not be said to have complied with the conditions of Section 12(3)(b) of the Rent Act. The contention was specifically negatived. The Court relied upon the unreported judgment in Civil Revision Application No.1053/1973 (decided on 18th March, 1976, Coram: S.H.Sheth, J.) and the judgment of the Full Bench in the matter of **Lalchand Jematmal v/s. Nanabhai Ranchhoddas and others** [17 GLR 1]. The Court held that, **"...Even if a tenant has not paid the rent regularly during the pendency of his revision application under sec. 29(2) of the Rent Act, it cannot be said that he has not complied with the conditions laid down by sec. 12(3)(b) of the Rent Act and that he has deprived himself of the benefit of that section."**

In the matter of John Panchal (supra), the above referred judgments of this Court were not brought to my notice.

In view of the aforesaid precedents the defendant

no.1, though has not deposited the rent pending this Revision Application, would not forfeit right to protection under Section 12(3)(b) of the Rent Act. No decree for eviction, therefore, can be passed against the defendant no.1.

No other contention is raised before me. In view of the above discussion, the Revision Application is dismissed. Rule is discharged. The parties shall bear their own cost.

Civil Application stands disposed of.

(Ms. R.M.Doshit, J.)

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